

A **YB DATO' PADUKA HUSAM MUSA v. YB DATO' NOZULA MAT DIAH & ORS (NO. 2)**

HIGH COURT MALAYA, KUALA LUMPUR
SU GEOK YIAM J

[CIVIL SUIT NO: S-23-13-2008]

B 29 SEPTEMBER 2014

C **TORT:** Defamation – Damages – Assessment of – Plaintiff was vice president of political party – Defamatory articles published against plaintiff – Impact – Whether publication caused loss of support to plaintiff – Whether third defendant's conduct aggravated injury to plaintiff's feelings – Whether third defendant's apology sincere and made promptly – Whether publication had impact on results of general election – Fair compensation

D **PRESS & PUBLICATIONS:** Newspaper – Libel – Apology – Whether made sincerely – Whether sufficient to vindicate reputation of plaintiff – Whether apology published in inconspicuous part in newspaper – Whether apology made promptly – Assessment of damages – Factors to consider

E On 12 April 2013, the court allowed the plaintiff's claim on liability against The New Straits Times Press (M) Bhd ('the third defendant') for libels written, printed and published by the third defendant. The trial proceeded with the assessment of damages. The plaintiff was a politician and held the position of the Vice President of the Pan-Malaysian Islamic Party ('PAS'), a predominantly Malay political party. At the time of the publication of the libels, the plaintiff was, *inter alia*, the State Assemblyman for Kijang, a member of the EXCO of the State Government of Kelantan and the former
F Member of Parliament for Kubang Kerian. The entire issue was in relation to two articles which were published in 2007 by the third defendant titled "Suspended BN duo turn to ACA" and "9 penyelewengan PAS didedah" in its two newspapers, *ie*, The New Straits Times and the Berita Harian respectively. The plaintiff testified, *inter alia*, that the publication of the
G defamatory articles had severely prejudiced him, both personally and politically. It was argued that on the very first day when the defamatory news in the articles were published, it had caused a stir amongst the people who were close to him. This, as alleged, had caused a lot of embarrassment to him and his family. Further, the plaintiff argued that as a result of the publication
H of the articles, there was loss of support for him in the 2008 General Election. As a result, the plaintiff sought for a total sum of RM2,000,000 as general damages for the publication of the articles, a sum of RM1,000,000 as aggravated damages and a sum of RM1,000,000 as exemplary damages. The third defendant, however, argued that the plaintiff did not show that the
I former's conduct aggravated the injury to the plaintiff's feelings. It was also argued that the third defendant had published an apology to the plaintiff after

the first and second defendant's published their apologies to the plaintiff. The third defendant relied on *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* to justify an award of nominal damages in favour of the plaintiff since the immediate and prominent apology published by the third defendant must mean that the plaintiff had achieved a vindication of reputation. Since this had been achieved through the non-monetary way, it was submitted that the damages must be very minimal. It was also argued that the plaintiff's witnesses, namely, PW2 and PW3 were not disinterested witnesses. On the contrary, the plaintiff submitted that the apology issued by the third defendant was not sufficient for him as opposed to the first and second defendants' confessions and apologies which were made sincerely and they had agreed to make their apologies public *via* newspapers and advertisements. Further, it was alleged that the plaintiff himself did not know that the third defendant had made the public apology in the New Straits Times dated 9 June 2009.

Held (awarding plaintiff a sum of RM350,000 as general, aggravated and exemplary damages):

- (1) An award for general damages is to compensate the claimant for the effect of the defamatory statement. The functions of general damages, *inter alia*, are: (i) to act as a consolation to the claimant for the distress he suffered from the publication of the defamatory statement; and (ii) to repair the harm to his reputation. An award for aggravated damages is made where the conduct of the defendant at the time of the publication of the libel and/or the defendant's conduct of the case after the plaintiff had filed his claim and/or the defendant's state of mind had aggravated the injury done to the plaintiff. An award for exemplary damages is to punish the defendant for wilfully committing the tort or to teach the defendant that tort does not pay. (paras 26-28)
- (2) After both the first and second defendants had made their public apologies to the plaintiff and some nineteen months after the publication of the defamatory news in the articles, the third defendant made a public apology to the plaintiff in The New Straits Times. The plaintiff had built up his good reputation from the time when he was actively involved in the students' movement in the 1980's while he was studying in the university. The third defendant, by suddenly publishing the defamatory news to the effect that the plaintiff was involved in the corruption and embezzlement of Government funds scandals, had condemned the plaintiff in the eyes of the members of the public, in general, and the electorate, in particular. (paras 44 & 45)
- (3) The impact of the plaintiff's injured reputation resulting from the libels could not be seen solely in the context of the State Constituency of Salor in Kelantan where he had contested since the plaintiff was the most senior member of the Kelantan State EXCO at the material time. Further, in the week before the hearing of the assessment of damages by

- A the court, the third defendant still continued to publish false news about the plaintiff and it had aggravated the plaintiff's position by causing more damage to his reputation. (para 45)
- B (4) The apology which was published by the third defendant in The New Straits Times was not a sincere apology and it was, therefore, insufficient to vindicate the reputation of the plaintiff, fully or substantially. Unlike the insincere apology which was published by the third defendant, the apologies of the first and second defendants were made sincerely as they were made promptly after the instant suit was filed by the plaintiff against them. Further, the third defendant's apology was made unilaterally since it did not contact the plaintiff before making the public apology in The New Straits Times. The said apology was published in a small column in an inconspicuous part in The New Straits Times compared to the publication of the defamatory articles by the third defendant concerning the plaintiff which was in a prominent and conspicuous part of the third defendant's two newspapers, especially the Berita Harian. (paras 48, 50, 54 & 55)
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- D
- E (5) The apology was published in The New Straits Times, an English newspaper, but not in the Berita Harian, a Malay newspaper, in which the second article was published by the third defendant. As such, the apology did very little to vindicate the plaintiff's reputation as majority of the electorate in Malaysia, in general, and in Kelantan, in particular, are Malays and it was most unlikely that they would have read the third defendant's apology in The New Straits Times. From the conduct of the third defendant's subsequent publication, an irresistible inference could be drawn that the third defendant's public apology was not sincere and the third defendant was actuated by malice when it published the libels against the plaintiff. The third defendant's apology could not amount to a substantial mitigation of damages since it was manifestly inadequate. Further, the apology was not made promptly as it was made more than a year after the libels were committed. (paras 55, 57, 66 & 67)
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- G
- H (6) Substantial damages was awarded to compensate the plaintiff for the distress and embarrassment suffered by him and his family and also for the serious injury caused to his reputation, feelings, dignity and pride resulting from the libels contained in the articles. Hence, the plaintiff had succeeded in justifying his claim for aggravated damages against the third defendant but the court was not inclined to award him the sum of RM1,000,000 as claimed. (paras 58 & 59)
- I (7) The plaintiff had sufficiently proved on a balance of probability that the third defendant intended on selling its newspapers, in particular, the Berita Harian, for monetary gain with total disregard for the plaintiff's good name and to cause as much damage as possible to the plaintiff's reputation in order to ensure that he was either not selected to contest in the Salor constituency by PAS in the 2008 General Election or if he

- was so selected, to ensure that he would lose in the said election, by poisoning the minds of the electorate against him. Hence, the court included in the compensatory damages an amount for exemplary damages but it was considerably less than the sum of RM1,000,000 which was claimed by the plaintiff. (paras 72 & 73) A
- (8) The testimonies of the plaintiff's witnesses were based on facts and their own beliefs, opinions and perceptions of the matter. They were found to be honest and credible witnesses although they were not disinterested witnesses. PW2 and PW3 felt and believed that the article was deliberately published by the third defendant in the two newspapers to injure the plaintiff's reputation by lowering his estimation in the minds of right thinking members of the society and to discourage the electorate from supporting him and voting for him in the 2008 General Election. The damage suffered by the plaintiff was serious due to the publication of the articles. (paras 93-95) B C
- (9) An irresistible inference could be drawn that in publishing the libels against the plaintiff, it was the intention of the third defendant to oppress the plaintiff who had joined PAS as a member since 1982 and to ensure that the plaintiff would either not be allowed to contest in the 2008 General Election or that if the plaintiff was allowed to contest, he would either lose or win with a significantly reduced majority, considering that in the 2004 General Election, the plaintiff won with a significantly reduced majority of 2,882 votes. A reasonable inference was also drawn that if the third defendant had not libelled the plaintiff in that manner, the plaintiff would have been able to win the seat which he had contested in the 2008 General Election with a substantially higher vote margin than the majority of 3,232 votes which he obtained, taking into consideration that in the 1999 General Election, he was able to win with a big majority, *ie*, a majority of 16,091 votes. (para 99) D E F
- (10) The plaintiff did not adduce any evidence in the trial to show that he was entitled to be awarded the total sum of RM4,000,000 as general, exemplary and aggravated damages which were prayed for specifically and expressly in the statement of claim. Further, the amount of damages which the court ought to award to the plaintiff in the instant case should be within the comparable range of awards after having taken into consideration the current awards made by other courts for similar defamation suits. (para 100) G H

Case(s) referred to:

- Chin Choon v. Chua Jui Meng* [2005] 2 CLJ 569 CA (*refd*)
Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 5 CLJ 301 HC (*refd*) I
Datuk Seri Mohammad Nizar Jamaluddin lwn. Utusan Melayu (M) Bhd [2014] 2 CLJ 605 HC (*refd*)
Datuk Seri Utama Dr Rais Yatim v. Amizudin Ahmat [2011] 1 LNS 1441 HC (*refd*)

- A *Hays Plc v. Hartley* [2010] EWHC 1068 (*refd*)
Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors [2005] 4 CLJ 169 CA (*refd*)
Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 CA (*refd*)
MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun [2002] 3 CLJ 577 FC (*refd*)
Rookes v. Barnard [1964] AC 1129 (*refd*)
Utusan Melayu (Malaysia) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor [2005]
B 1 CLJ 71 CA (*refd*)
YB Dato' Paduka Husam Musa v. YB Dato' Nozula Mat Diah & Ors [2013] 1 LNS 1399 HC (*refd*)

For the plaintiff - Mohd Yunus Shariff; M/s Saiful Kasri & Assocs
For the 3rd defendant - Rishwant Singh; M/s Zul Rafique & Partners
C Reported by Kumitha Abd Majid

JUDGMENT

Su Geok Yiam J:

D **Background**

[1] The trial for the assessment of damages was conducted following the court's decision dated 12 April 2013 allowing the plaintiff's claim on liability against the third defendant for libels written, printed and published by the third defendant with damages to be assessed (see *YB Dato' Paduka Husam Musa v. YB Dato' Nozula Mat Diah & Ors* [2013] 1 LNS 1399).

[2] The entire issue in this action revolves around two articles published by the third defendant entitled 'Suspended BN duo turn to ACA' (the "first article") and '9 Penyelewengan Pas didedah' (the "second article") on 28 November 2007 in its two newspapers, namely, The New Straits Times, and the Berita Harian, respectively (the "articles"). The New Straits Times is an English daily whereas the Berita Harian is a Malay daily.

[3] The reliefs claimed by the plaintiff against the third defendant are set out in para. 23 of his statement of claim.

G [4] The paragraph states as follows in Malay:

23. OLEH YANG DEMIKIAN, Plaintiff menuntut:-

...

- H 4. Ganti rugi Am daripada defendan ketiga yang berbangkit daripada pencetakan dan penyiaran rencana dalam akhbar New Straits Times bertarikh 28 November 2007 bertajuk 'Suspended BN Duo Turn To ACA' berkenaan plaintiff sebanyak RM1,000,000.00;
- I 5. Ganti rugi Am daripada defendan ketiga yang berbangkit daripada pencetakan dan penyiaran rencana dalam akhbar Berita Harian bertarikh 28 November 2007 bertajuk '9 Penyelewengan PAS Didedah' berkenaan plaintiff sebanyak RM1,000,000.00;

6. Ganti rugi Teladan sebanyak RM1,000,000.00; A
7. Ganti rugi Teruk sebanyak RM1,000,000.00;
- ...
9. Faedah pada kadar 8% setahun ke atas jumlah penghakiman dari tarikh pemfailan tindakan ini ke atas tarikh penyelesaian atau pada satu kadar dan untuk suatu jangkamasa yang dianggap patut oleh Mahkamah Yang Mulia ini; B
10. Defendan-defendan membayar Plaintiff kos dan kos berbangkit daripada tindakan ini;
11. Perintah lain atau selanjutnya yang dianggap patut oleh Mahkamah yang Mulia ini. C

[5] It is clear that in so far as damages are concerned, the plaintiff is seeking a total sum of RM2,000,000 as general damages for the publication of the articles, a sum of RM1,000,000 as aggravated damages and a sum of RM1,000,000 as exemplary damages. D

Witnesses Who Were Called During The Assessment Of Damages

[6] In the assessment of damages, the plaintiff called three witnesses, namely, the plaintiff himself as PW1; Encik Wan Syukri bin Wan Ibrahim as PW2; and Encik Mohd Shahiran bin Mat Hassan as PW3. E

[7] The third defendant did not call any witness.

Third Defendant's Submissions

[8] The third defendant submitted as follows:

[9] The plaintiff's claims for exemplary and aggravated damages ought to be dismissed and only nominal damages ought to be allowed as general damages in favour of the plaintiff. F

[10] The damages claimed by the plaintiff for the publication of the articles are grossly exaggerated. G

[11] The third defendant relied on the decision of Gopal Sri Ram JCA (as he then was) in *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385 in support of his submission that the courts no longer awarded millions of ringgit in damages for defamation cases and that the mega award of damages in *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577; [2002] 2 MLJ 673 has been much misunderstood. H

[12] In that case, the learned judge said as follows in delivering the judgment of the Court of Appeal at p. 395 of the report:

In the process of making our assessment we may have not overlooked the recent trend in this country of claims and awards in defamation cases running into several million ringgit. No doubt that trend was set by the decision of this Court in *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* (*supra*). It is a decision that has been much misunderstood. The underlying I

- A philosophy of that decision is that injury to reputation is as, if not more, important to a member of society then the loss of a limb. But we think that the time has come when we should check the trend set by that case. This is to ensure that an action for defamation is not used as an engine of oppression.
- B [13] The third defendant also relied on the decision of Abdul Hamid Mohamad JCA (as His Lordship then was) in *Karpal Singh Ram Singh v. DP Vijandran* [2001] 4 MLJ 161 in support of his submission that the mega award of damages in *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun*, *supra*, was an isolated case. In that case His Lordship said as follows at p. 185:
- C Until the arrival of Vincent Tan in 1995, the highest award ever given by the court in this country was RM100,000. Vincent Tan skyrocketed the awards. When the award was confirmed by the Court of Appeal, what was an isolated pinnacle in an otherwise undulating plain, the trend is set. When the Federal Court confirmed it, it became a binding precedent in all courts in this country. But, now, the Court of Appeal in Liew Yew Tiam has had second thoughts about it. The learned judge of the Court of Appeal who wrote the main judgment in *MGG Pillai* has sought to distinguish *MGG Pillai*'s case. 'It is a decision that has been much misunderstood and the trend should be checked', he said.
- D
- E [14] Reverting back to the instant case, the witnesses that the plaintiff called in support of his case (including the plaintiff himself) are not disinterested witnesses.
- F [15] There were absolutely no specific references to the damages that the plaintiff suffered in the evidence that the plaintiff led through PW2 and PW3. Nothing, therefore, turns on the evidence of them.
- G [16] It becomes clear from the documents adduced in the trial and from the plaintiff's testimony in the trial that the publication of the articles by the third defendant in 2007 clearly did not evidence loss of support for the plaintiff in the 2008 General Elections. The plaintiff's vote margins, in fact started to reduce even before the articles were published.
- H [17] The law is trite when it comes to an apology: an apology reduces damages significantly. In this case, the apology was published by the third defendant immediately after the first and second defendants published their apologies and before this action was filed by the plaintiff.
- I [18] The apology that the third defendant issued sufficiently vindicates the plaintiff's reputation since he has accepted similar apologies from the first and second defendants as full and final settlement of his claims against them.
- [19] The plaintiff did not and cannot show that the third defendant's conduct aggravated the injury to the plaintiff's feelings. There was no evidence to this effect during the assessment of damages. On the facts, the third defendant has even gone one step further to publish an apology to the plaintiff after the first and second defendants apologised to the plaintiff.

[20] The third defendant relied on the decision of the court in *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 5 CLJ 301 (“*Dato' Seri Anwar Ibrahim's case*”) to justify an award of nominal damages in favour of the plaintiff in the instant case. This is because the immediate and prominent apology published by the third defendant in the instant case must mean that the plaintiff has achieved a vindication of reputation. Since this has been achieved through the non-monetary way, the damages that follow must be very minimal.

[21] The plaintiff's claim for aggravated damages must, therefore, fail.

[22] In so far as exemplary damages are concerned, there are no justifications whatsoever on the facts warranting the award of the same. The plaintiff has not proved that his claim for exemplary damages comes under any of the limbs and considerations referred to in the case of *Rookes v. Barnard* [1964] AC 1129. There was no argument on the same advanced by the plaintiff during the trial of the matter. Therefore, the claim for the sum of RM1,000,000 for exemplary damages must necessarily fail.

Decision Of The Court

[23] Upon the conclusion of the assessment of damages, the court awarded to the plaintiff a sum of RM350,000 in general, aggravated and exemplary damages with costs of RM10,000 and with interest of 5% per annum from the date of the filing of the suit until the date of full settlement (“the award of damages”).

[24] Being dissatisfied with the award of damages handed down by the court, the third defendant has filed a notice of appeal to the Court of Appeal against the award of damages by the court.

Reasons For Arriving At The Award Of Damages

[25] The reasons why the court decided in that manner are as follows:

- (i) Firstly, the court took into consideration the evidence which was adduced by the plaintiff and his two witnesses during the hearing for the assessment of damages, the submissions of and the authorities cited by both the parties and all the relevant factors relied upon by the plaintiff for the purpose of the assessment of damages.
- (ii) Secondly, the court relied on its grounds of judgment for its decision of liability in which the court said that based on the evidence adduced before the court by the parties in the full trial and the legal principles governing awards of damages in defamation cases (see *Gatley on Libel & Slander*, 11th Edition) the third defendant ought to be compensated by an award for general, aggravated and exemplary damages

[26] An award of general damages is to compensate the claimant for the effect of the defamatory statement. General damages serve three functions. Firstly, it is to act as a consolation to the claimant for the distress he suffers

A from the publication of the defamatory statement. Secondly, it is to repair the harm to his reputation (including, where relevant, his business reputation). Thirdly, it is a vindication of his reputation (see *Gatley on Libel and Slander*, 11th Edn, para. 9.2, at p. 265).

B [27] An award for aggravated damages is made where the conduct of the defendant at the time of the publication of the libel and/or the defendant's conduct of the case after the plaintiff has filed his claim and/or the defendant's state of mind have aggravated the injury done to the plaintiff ie, there may be malevolence or spite on the defendant's part or the defendant's manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride.

C [28] An award for exemplary damages is to punish the defendant for wilfully committing the tort or to teach the defendant that tort does not pay.

D [29] Based on the evidence of PW1, PW2 and PW3 the plaintiff has proven on a balance of probability that he has satisfied the necessary criteria for an award of substantial damages based on the injury to his reputation, his feelings, dignity and pride, all of which were caused by the third defendant's libels which were contained in the articles published in the third defendant's two newspapers ie, The New Straits Times and the Berita Harian.

E [30] In *Datuk Seri Utama Dr Rais Yatim v. Amizudin Ahmat* [2011] 1 LNS 1441, the court referred to and applied the trite law concerning the factors which are to be taken into account by the court in the assessment of damages. In that case, the court held as follows:

Damages

F It is trite law that a particular libel case cannot be equated with other libel cases. Each libel case is unique and has its own particular and peculiar facts. The Federal Court in *MGG Pillai v. Tan Sri Vincent Tan* [1995] 2 CLJ 912 said in its judgment that:

G We cannot by our judgment set a precedent on the damages to be awarded. The court must consider a number of factors when assessing damages in a libel case. In *John v. MGN Ltd* [1997] QB 586 at 607, Sir Thomas Bingham MR (now CJ) said:-

H In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it (the defamation) touched the plaintiffs personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation but the significance of this is much greater a case where the defendant

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asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published, and publicly expresses regret that the libellous publication took place.

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Damages in defamation cases are described as being at large. The law has not fixed any exact measure for assessment of damages in an action for defamation. There is no mathematical formula by which the quantum can be determined; nor is there any requirement that the damages be assessed with mathematical certainty. But a small sum awarded to a prominent public figure for a serious libel could be interpreted as trivialising the incident.

B

The Federal court went on to distinguish the difference between the awards of damages in personal injury cases where there is no intention to cause harm or damage to the plaintiff. The tort in personal injury cases is based purely on negligence of the defendant and breach of duty of care owed to the plaintiff. The element of punishment or deterrence does not enter into an award in personal injury cases. This is because the award in personal injury cases is to compensate the plaintiff for the pain and suffering which the plaintiff has suffered or will suffer in the future. Whilst, in defamation cases the defendant intentionally publishes the injurious false statement to cause humiliation and anguish to the plaintiff, and to injure his reputation. The Federal Court went on:

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D

The intention to defame the plaintiff is not necessary for the court to impose liability on the defendant because the intention to defame can be inferred from the publication of the defamatory statement which gives rise to the presumption of malice on the part of the defendant. The plaintiff in a defamation case gets compensation not for his damaged reputation. He gets it because he was injured in his reputation by being publicly defamed. The award of damages given to him serves as a vindication of the plaintiff to the public and as a consolation to him for a wrong done.

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F

In determining quantum of damages the following factors are taken into consideration:

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- (i) **the conduct of the Plaintiff;**
- (ii) **the Plaintiff's position and standing in society;**
- (iii) **the nature of the libel;**
- (iv) **mode and extent of publication;**
- (v) **the absence or refusal of retraction or apology;**
- (vi) **the whole conduct of the Defendant from the time the libel was published down to the very moment of the verdict.**

H

(Emphasis added).

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[31] In *Chin Choon v. Chua Jui Meng* [2005] 2 CLJ 569; [2005] 3 MLJ 494 the plaintiff was a Deputy Minister at the time he was defamed by the defendant. The trial court awarded RM1,500,000 which included

A compensatory, aggravated and exemplary damages. This case went on appeal and the Court of Appeal having regard to the very special circumstances of this case reduced the award to a global amount of RM200,000.

B [32] In delivering the judgment of the Court of Appeal, Gopal Sri Ram JCA (as he then was) quoted with approval the following factors to be taken into account in assessing damages as laid down in *Defamation Law, Procedure & Practice by Price & Duodu* (third ed, para. 20-04 at p. 208) at p. 498:

The amount of damage awarded in respect of vindication and injury to reputation and feelings depends on a number of factors:

- C (1) The gravity of the allegation.
(2) The size and influence of the circulation.
(3) The extent and nature of the claimant's reputation.
(4) The behaviour of the defendant.
D (5) The behaviour of the claimant.

This list is most helpful. But it must be borne in mind that it is not by any means exhaustive of the matters which the court may take into account when making an assessment.

E [33] In *Utusan Melayu (M) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor* [2005] 1 CLJ 71 the High Court awarded RM1.3 million to the plaintiffs after finding the defendants liable for the publication of an article which claimed that the plaintiffs produced unsightly batik and brought shame to the country by allowing world leaders to wear unsightly and ugly costumes made from such batik material. On appeal, the award was reduced to RM250,000.

F [34] The High Court in *Dato' Seri Anwar Ibrahim's* case said as follows:

G [81] Going by the pleadings, the plaintiff claims the sum of RM100m as general damages as well as aggravated and exemplary damages. I think by all accounts, the claim of RM100m is a gross exaggeration. The principle in damages is that it is compensatory and not a path to untold riches. Even in the most serious cases of defamation in respect of integrity and honour, I cannot imagine general damages to exceed the quantum that is usually awarded in personal injury claims to a claimant who is fully disabled. For a man who has been defamed cannot be said to be in a worse position than one who has lost the use of vital parts of his or her anatomy. In *McCarey v. Associated Newspapers Ltd & Ors (No 2)* [1965] 2 QB 86 at p 109, Diplock LJ said: 'I do not believe that the law today is more jealous of a man's reputation than of his life and limb'.

...

I [84] The question that arises is therefore this. Should the primary aim of a remedy in defamation be in satisfying the plaintiff's hurt feelings etc or should it be in vindicating his or her standing in the community? In my respectful view, if we concern ourselves primarily with putting the plaintiff in the position he or she was before the defendant's wrongdoing, vindication of his or her standing in the community should be the focus

of the remedy rather than any award of large sums of money for the plaintiff's hurt feelings. Plaintiff may however also feel that only substantial damages may vindicate or restore their reputation and good name. But I think that vindication of reputation can also be achieved through non-monetary means. For example, the best vindication would be an almost immediate and prominent apology, correction or retraction by the defendant after publication of defamatory material. In that situation, there would be minimal damages. It should also follow that a court-ordered correction on a defendant after a trial would serve just as well if not better in the vindication or restoration of a damaged reputation than large money damages.

[85] In the instant case, there is already some measure of vindication for the plaintiff in that the statutory declaration of Ahmad Murad has now been discredited. The natural effect of this is that the impugned article loses all credibility. Even though the truth or falsity of the impugned article was never the issue as the defendants relied on privilege, as it turned out, the evidence revealed in the trial shows the falsity of the article itself and the imputations that arise from it. The net effect is that the plaintiff has achieved public vindication of the truth. Vindication has however come late and for that the plaintiff must be compensated. There was no evidence that the plaintiff has experienced any economic harm. So all things considered, I do not see any rationale for awarding substantial damages. The law of defamation, as I see it, must be more about truth and reputation than money. Much of the disaffection and criticism in this regard stems from the common law's passion and preoccupation in reducing disputes to money damages. I think, with respect, the compensation principle in tort defamation should focus primarily on vindication through both monetary and non-monetary means.

[86] Seen in this light, and with respect, earlier cases awarding considerable damages for reputational harm do not offer any guidance in determining the quantum of damages. In any event, these cases cannot serve as precedents for quantum like the case for personal injury claims. There are far too many variables in the damage to a reputation when compared to damaged parts of the anatomy in personal injury claims. This much was also asserted by Abdul Hamid Mohamad JCA (as he then was) in *Karpal Singh A/L Ram Singh v. DP Vijendran* [2001] 4 MLJ 161 at p 185 when he said:

This court is bound by the decisions of the Federal Court. But what is binding is the principle laid down by the Federal Court in assessing damages in libel cases, not the amount. The amount to be awarded in each case depends on the facts and circumstances of the case. Indeed, how much is too much, how much is too little and how much is reasonable is quite subjective. No scale can be fixed.

[87] In other words, damages are 'at large' – they are awarded on a case by case basis and not according to a scale of damages. Nevertheless, there are factors which the court can take into account in assessing damages.

- A In this regard, *Gatley on Libel and Slander* (11th Ed), states that factors that can be taken into account when assessing damages are the conduct of the claimant, his position and standing, the nature of the libel, the mode and extent of the publication, the absence or refusal of any retraction or apology and the conduct of the defendant from the time the libel was published down to the verdict.
- B [35] In my considered view, each of the above decisions must be read in the light of their own facts.
- [36] In applying the principles of law as stated in the above cases and the relevant factors to be taken into account in assessing the amount of damages
- C to be awarded to the plaintiff in the instant case, the court took into consideration the following matters:
- [37] Firstly, DW1 who was the third defendant's witness in the full trial of the plaintiff's claim admitted that the plaintiff was the target in the publication of the defamatory article.
- D [38] Secondly, the court took judicial notice of the fact that both the newspapers are distributed, sold to and read by the members of the public in Malaysia, especially in Peninsular Malaysia. Yet, there was no evidence adduced by the third defendant either by calling their witness or witnesses or by cross-examination of any of the plaintiff's witnesses to establish the
- E contrary.
- [39] Thirdly, it is an undisputed fact that, at all material times, the plaintiff is a young capable politician, holding the position of the Vice-President of the Pan-Malaysian Islamic Party ("PAS"), which is a political party that is
- F founded on Islamic principles and which advocates and adopts Islamic policies, especially, in opposing any form of corruption, cronyism and misuse of power. At the time of the publication of the libels, the plaintiff was also a member of the State Legislative Assembly for Kijang, in the State of Kelantan Darul Naim, a member of the EXCO of the State Government of Kelantan Darul Naim ie, the Chairman of the Committee for Public
- G Administration, Economic Planning, Finance and Social Development in the Kelantan State Government and the former Member of Parliament ("MP") for Kubang Kerian. These facts were not challenged and/or disputed by the third defendant. In fact, during the full trial of the plaintiff's claim, the third defendant's witnesses recognised that the plaintiff is a well-known politician
- H from PAS.
- [40] Fourthly, in the hearing of the assessment of damages, the plaintiff testified that the publication of the defamatory articles by the third defendant had severely prejudiced him, both personally and politically. The plaintiff said that on the very first day when the defamatory news in the articles was
- I published by the third defendant, it had caused a stir amongst the people who are close to him. This is because they thought that the news was true. Hence, the plaintiff had to give his explanations, repeatedly, to the many people,

who had called him up to ask him about the news contained in the two articles, that the news was false. This caused a lot of embarrassment to him and his family.

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[41] The plaintiff had, immediately, instructed his solicitors to send a letter dated 14 January 2008 to the first, second and third defendants to demand that each of the three defendants retract the false news which was contained in the articles and publish an apology to him in the third defendant's newspapers in order to vindicate his name and reputation. However, all the three defendants refused to do so.

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[42] Hence, on 31 January 2008, the plaintiff had to resort to filing the instant suit against all the three defendants to claim for damages for slander and libel against the first and second defendants and to claim for damages for libel against the third defendant in order to salvage his reputation and to prevent his reputation from further deteriorating.

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[43] Subsequent to the filing of the plaintiff's suit, the first defendant made and published his public apology to the plaintiff in the *Berita Harian* dated 2 June 2009 whilst the second defendant made and published his public apology to the plaintiff in another Malay newspaper, namely, the *Utusan Malaysia* dated 4 June 2009.

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[44] After both the first and second defendants have made their public apologies to the plaintiff and some nineteen months after the publication of the defamatory news in the articles, the third defendant made a public apology to the plaintiff in *The New Straits Times* dated 9 June 2009. All these facts were not challenged and/or disputed by the third defendant.

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[45] Fifthly, the plaintiff had built up his good reputation from the time when he was actively involved in the students' movement in the 1980's while he was studying in the university. The third defendant, by suddenly publishing the defamatory news to the effect that the plaintiff was involved in the corruption and embezzlement of government funds scandals, had condemned the plaintiff in the eyes of the members of the public, in general, and the electorate, in particular, even before the serious allegations and accusations against him concerning corrupt practices and embezzlement of government funds were proven against him. The impact of the plaintiff's injured reputation resulting from the libels cannot be seen solely in the context of the State constituency of Salor in Kelantan where he had contested since the plaintiff was the most senior member of the Kelantan State EXCO, at the material time. This is because the reputation of the PAS leadership in the State of Kelantan was also seriously tarnished by the libels in the articles.

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[46] Moreover, the third defendant's newspapers never got tired of exacerbating the injury to the plaintiff's reputation from the beginning of the publication of the articles right until the date of the hearing of the assessment of damages. This is because in the week before the hearing of the assessment

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A of damages by the court, the third defendant still continued to publish false news about the plaintiff and it had aggravated the plaintiff's position by causing more damage to his reputation.

B [47] Sixthly, the court rejected the suggestion of the third defendant that the third defendant never gained any benefit from the publication of the defamatory articles. The court also believed and accepted the plaintiff's evidence that it was the objective of the United Malay National Organisation ("UMNO") to assassinate his character by deliberately destroying or injuring maliciously the plaintiff's reputation and that the third defendant had assisted UMNO to achieve its objective by deliberately sensationalising the false news and propagating the libels maliciously against him. This is because the plaintiff had explained that the third defendant is owned by the opposition party in Kelantan ie, UMNO, and that both the newspapers which are owned by the third defendant are the mainstream media in Malaysia as these facts were not challenged, disputed or rebutted by the third defendant.

D [48] Seventhly, the court found that based on the evidence adduced by the plaintiff in the assessment of damages, the apology which was published by the third defendant on p. 20 in The New Straits Times dated 9 June 2009 was not a sincere apology and it was, therefore, insufficient to vindicate the reputation of the plaintiff, fully or substantially. A copy of the apology published by the third defendant can be found on p. 4 of Bundle C which was marked as P6 in the full trial of the plaintiff's claim against the third defendant.

[49] A part of the apology reads as follows:

F ... The New Straits Times Press expresses its sincere regrets to Husam for any distress and embarrassment caused to him by publishing that Nozula and Adhan lodged reports to the ACA.

G [50] The third defendant has placed great emphasis on the third defendant's apology, which as mentioned earlier herein, was published by the third defendant after the first and second defendants published their apologies and long after this action was filed by the plaintiff in order to urge this court to reduce significantly the amount of damages to be awarded to the plaintiff.

H [51] The plaintiff has, however, maintained during the trial that the apology issued by the third defendant was not sufficient for him. The essential questions that arise here are as follows:

If the apology issued by the first and second defendants (without damages) was sufficient for the plaintiff, why is the apology issued by the third defendant not sufficient? Why does the plaintiff insist on damages?

I [52] With regard to the apologies of the first and second defendants and their settlement with the plaintiff without any monetary payments, the court accepted the explanation of the plaintiff as to why there was no financial

settlement as the court found the plaintiff's explanation reasonable. The plaintiff had explained that the first and second defendants' confessions and apologies were made sincerely and they had agreed to make their apologies public *via* newspapers and advertisements. The actions of the first and second defendants serve as a political compliment to the plaintiff because they are the politicians from the opposition party ie, UMNO.

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[53] The court was of the considered view that unlike the insincere apology which was published by the third defendant in The New Straits Times, the apologies of the first and second defendants were made sincerely as they were made promptly after the instant suit was filed by the plaintiff against them, their apologies were in formats which were acceptable to the plaintiff and their apologies were also published in the Malay newspapers ie, the Berita Harian and the Utusan Malaysia.

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[54] On the other hand, the third defendant's apology was made unilaterally because the third defendant never contacted the plaintiff before making the public apology in The New Straits Times. The plaintiff himself did not even know that the third defendant had made the public apology in The New Straits Times dated 9 June 2009. Furthermore, the apology of the third defendant was not made promptly as it was only made after the first and second defendants had made their public apologies to the plaintiff and the third defendant's apology was also made more than one year after the plaintiff filed this suit against it.

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[55] Apart from that, the apology was only published in a small column in an inconspicuous part in The News Straits Times compared to the publication of the defamatory articles by the third defendant concerning the plaintiff which was in a prominent and conspicuous part of the third defendant's two newspapers, especially, the Berita Harian. The third defendant even blamed the first and second defendants in its apology to the plaintiff for its own role in libelling the plaintiff. On top of all these shortcomings, the apology was published in The New Straits Times, an English newspaper, but not in the Berita Harian, a Malay newspaper, in which the second article was published by the third defendant. Hence, in my considered view, the third defendant's apology did very little to vindicate the plaintiff's reputation as the majority of the electorate in Malaysia, in general, and in Kelantan, in particular, are Malays and it was most unlikely that they would have read the third defendant's apology in The New Straits Times dated 9 June 2007.

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[56] Since the plaintiff is a well-known politician in PAS, which is a predominantly Malay political party, it goes without saying that for the third defendant's public apology to be effective in vindicating the plaintiff's reputation, the third defendant has to publish the apology in the Berita Harian in order to enable the members of the public, in general, and the electorate, in particular, to read and understand the apology.

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A [57] The court also took into consideration the plaintiff's evidence that even after the third defendant had published the unilateral apology to the plaintiff, the third defendant continued to publish the defamatory articles. Hence, from the conduct of the third defendant subsequent to the publication of the libels as set out above, the court was able to draw an irresistible inference that the third defendant's public apology was not sincere and that the third defendant was actuated by malice when it published the libels against the plaintiff.

C [58] Therefore, in my judgment, the court had to award substantial damages to the plaintiff to compensate the plaintiff for the distress and embarrassment suffered by the plaintiff and his family and also for the serious injury caused to the plaintiff's reputation, feelings, dignity and pride resulting from the libels contained in the articles.

D [59] Hence, the plaintiff has succeeded in justifying his claim for aggravated damages against the third defendant but the court was not inclined to award to him the sum of RM1,000,000 as claimed by him.

[60] The law governing the award of aggravated damages has been succinctly stated as follows by *Gatley on Libel & Slander* (11th Edn, Sweet & Maxwell) at pp. 282 and 283:

E The conduct of the defendant, his conduct of the case, and his state of mind are all matters which the claimant may rely on as aggravating the damages in so far as they bear on the injury to him

F ... There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.

G The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding; persistence, by way of a prolonged or hostile cross-examination of the claimant, or in turgid speeches to the jury, in a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means.

H [61] In *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor*, *supra*, the High Court said as follows in relation to the plaintiff's claim seeking aggravated damages:

I [88] *The plaintiff in the instant case is also seeking aggravated damages. In the same edition, Gatley on Libel and Slander, states that the conduct of the defendant, his conduct of the case and his state of mind are all matters which the claimant may rely on as aggravating the damages.* In the instant case, I noted that there was no attempt to delay the proceedings, there was no hostile cross-examination of the plaintiff and importantly, no plea of justification was entered or pursued. It was only the failure of the defendants to verify the

accuracy of the material published as well as their failure to seek a response from the plaintiff that led to the unavailability of the defence of qualified privilege. On the question of apology or rather its absence, in *Joceline Tan Poh Choo & Ors v. V Muthusamy* [2003] 4 MLJ 494, in delivering the judgment of the Court of Appeal, Arifin Zakaria JCA (as he then was) cited with approval the Australian High Court decision in *Carson v. John Fairfax & Sons Pty Ltd* (1993) 178 CLR 44 at p 66 and ruled that 'the want of apology alone could not be said to have aggravated the plaintiff's injury'. For these reasons, I do not think that aggravated damages are in order.

(Emphasis added).

[62] Reverting back to the instant case, in my judgment, the plaintiff has succeeded in showing that the third defendant's conduct has aggravated the injury to the plaintiff's dignity, pride and feelings. There was sufficient evidence to this effect during the main trial and the assessment of damages.

[63] Hence, the plaintiff's claim for aggravated damages must succeed.

[64] In *Hays Plc v. Hartley* [2010] EWHC 1068 (QB), Tugendhat J dealt with the issue of vindication where an action for libel was continued after the plaintiff accepted satisfaction from the main defendants. At para. 59, the learned judge said as follows:

59. That leaves vindication and damages as the only remedies which the Claimant can pursue. Mr Sherborne referred me to a number of well known cases on the jurisdiction to strike out a claim for abuse of process. In none of them are the significant facts at all similar to those in the present case. *In my judgment the significant facts are that the Claimant is a corporation, that the defendant is a professional intermediary and not the originator of the words complained of, that the action is brought on a publication to a single individual, the Journalist, that the republication gave proper coverage to the Claimant's case (so any damages would be likely to be modest) and that the Claimant has received vindication both from the originators of the words complained of (in the form of the Public Statement) and from MGN (in the form of the republication on their website of the Public Statement).* That damages would on any view be modest is accepted by Mr Sherborne. In so far as the damages may have value as money they are not worth pursuing. If the Claimant pursued this action to trial and won, there is little prospect that it would be able to enforce any award that it might have. The defendant would be unable to pay any significant part of the damages and costs that might be awarded against him. Damages in defamation actions have an additional value: they are symbolic. They mark the seriousness of the defamation and are a part of the vindication. **But in the present case, the sum itself could not be so high as to add any value in terms of vindication to the Public Statement.**

60. *For these reasons alone I would hold that the pursuit of this action after the Settlement Agreement was and is an abuse of the process of the court. There is simply nothing of value that it can achieve for the Claimant.*

(emphasis added)

A [65] In the above case, the plaintiff continued its claim against the defendant who was a professional intermediary after it had received satisfaction and vindication from the main defendants who were the originators of the words complained of. The English Court struck out the plaintiff's claim for abuse of court process. The court rejected the third defendant's submissions that the facts in the case cited above are similar to the facts in the instant case and that the plaintiff should not be entitled to any damages whatsoever for this reason alone because the plaintiff has continued his claim against the third defendant, who published the press conference and press release given by the first and second defendants, after the plaintiff had withdrawn his claims against the first and second defendants with no orders as to costs.

D [66] In the instant case, although the third defendant's submission that the publication of the apology by the third defendant, pursuant to the above authorities, ought to be taken into consideration as a mitigation of damages, the court found as a matter of fact that it was not a prompt apology as it was made more than a year after the libels were committed. Hence, the third defendant's apology failed to mitigate the damages substantially and was also not a sincere apology.

E [67] In my judgment, the third defendant's apology could not amount to a substantial mitigation of damages because the court was of view that it was manifestly inadequate in the instant case. On the effect of an apology on the amount of damages to be awarded to a plaintiff, the learned authors of the text, *Gatley on Libel and Slander* 11th Edn, Sweet & Maxwell 2008, state as follows:

F 31.1 Apology: mitigation and defence. *A defendant may rely in mitigation of damages on the fact that he has made an adequate apology to the plaintiff for the publication of the matter complained of. Indeed, an offer of an apology, unreasonably refused, could also be put forward as grounds for mitigation of damages.*

(Emphasis added).

G [68] Paragraph 35.55 of *Gatley on Libel and Slander* (11th Edn, Sweet & Maxwell 2008) further states as follows:

H Effect of apology. Although an apology is no defence to an action for libel and slander, the prompt publication of an apology can be substantial mitigation of damages ... The sooner an apology is published the greater its mitigating effect, but an apology offered or published after the commencement of the action, or even in the course of trial, may be put forward as mitigation.

I [69] In so far as exemplary damages are concerned, there are justifications on the facts and circumstances of the instant case warranting the award of the same in favour of the plaintiff but not to the tune of RM1,000,000 as claimed by the plaintiff.

[70] In *Dato' Seri Anwar Ibrahim's* case, the High Court said as follows:

[89] In respect of exemplary damages, the arguments in favour of it are the least persuasive. In *Roshairee bin Abdul Wahab v. Mejar Mustafa bin Omar & Ors* [1996] 3 MLJ 337 [DBA Tab 9], James Foong J (as he then was) applied the decision in *Rookes v. Barnard & Ors* [1964] AC 1129 [DBA Tab 10] and noted that exemplary damages 'must be restricted to situations where there are oppressive, arbitrary or unconstitutional actions by servants of the government or where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff'.

[90] Similar sentiments were expressed by Richard Malanjum J (as he then was) in *Chong Siew Chiang v. Chua Ching Geh & Anor* [1995] 1 MLJ 551 [DBA Tab 11] at p 558; [1995] 1 AMR 1 at p 7 where he said:

Before considering any exemplary damages it must be considered first whether the sum in mind for compensatory damages would be adequate. If it is not, in view of the outrageous conduct of the defendant and to indicate disapproval of such conduct and as a deterrence, an additional sum may be added to bring the sum sufficient as punishment.

(Emphasis added).

[71] In delivering the Court of Appeal's judgment in the case of *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169; [2005] 6 MLJ 289 Gopal Sri Ram JCA (as he then was) relied on the case of *Rookes v. Barnard* [1964] AC 1129 and said as follows:

When as a matter of law exemplary or aggravated damages may be awarded was settled by the speech of Lord Devlin in *Rookes v. Barnard* [1964] AC 1129 which was re-affirmed by the House in *Cassell v. Broome* [1972] AC 1027. He said that there were two categories in which exemplary damages may be awarded and three considerations that operate in the making of the award. It is best that I reproduce the whole of the passage in which Lord Devlin deals with the point. This is what he said:

(T)here are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law, and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal. I propose to state what these two categories are; and I propose also to state three general considerations which, in my opinion, should always be borne in mind when awards of exemplary damages are being made. I am well aware that what I am about to say will, if accepted, impose limits not hitherto expressed on such awards and that there is powerful, though not compelling, authority for allowing them a wider range. I shall not therefore conclude what I have to say on the general principles of law without returning to the authorities and making it clear to what extent I have rejected the guidance which they may be said to afford.

A The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category - I say this with particular reference to the facts of this case - to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the others, he might perhaps be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not in my opinion punishable by damages.

Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. I have quoted the dictum of Erie CJ, in *Bell v. Midland Ry Co* (1861) 10 CBNS at p 304. Maule J, in *Williams v. Currie* (1845) 1 CB at p 848, suggests the same thing; and so does Martin B, in an obiter dictum in *Crouch v. Great Northern Ry Co* (1856) 11 Exch 742 at p 759. It is a factor also that is taken into account in damages for libel; one man should not be allowed to sell another man's reputation for profit. Where a defendant with a cynical disregard for plaintiffs' rights has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category is not confined to money making in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object - perhaps some property which he covets - which either he could not obtain at all or not obtain except at a price greater than he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay. To these two categories, which are established as part of the common law, there must of course be added any category in which exemplary damages are expressly authorised by statute.

I wish now to express three considerations which I think should always be borne in mind when awards of exemplary damages are being considered. First, the plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour. The anomaly inherent in exemplary damages would become an absurdity if a plaintiff totally unaffected by some oppressive conduct which the jury wished to punish obtained a windfall in consequence. Secondly, the power to award exemplary damages constitutes a weapon that, while it can be used in defence of liberty, as in the Wilkes case (1763) Lofft 1, can also be used against liberty. Some of the awards that juries have made in the past seem to me to amount to a greater punishment than would be likely to be incurred if the conduct were criminal; and moreover a punishment imposed without the safeguard which the criminal law gives to an offender. I should not allow

the respect which is traditionally paid to an assessment of damages by a jury to prevent me from seeing that the weapon is used with restraint. It may even be that the House may find it necessary to follow the precedent it set for itself in *Benham v. Gambling* [1941] AC 157, and place some arbitrary limit on awards of damages that are made by way of punishment. Exhortations to be moderate may not be enough. **Thirdly, the means of the parties, irrelevant in the assessment of compensation, are material in the assessment of exemplary damages. Everything which aggravates or mitigates the defendant's conduct is relevant.**

(Emphasis added).

[72] Reverting back to the instant case, in my judgment, the plaintiff has proved his claim for exemplary damages which comes under the limbs and considerations referred to in the case of *Rookes v. Barnard* [1964] AC 1129 which was cited in the above case. In my judgment, the plaintiff has sufficiently proven on a balance of probability that the third defendant was intent on selling its newspapers, in particular, the *Berita Harian*, for monetary gain with total disregard for the plaintiff's good name and to cause as much damage as possible to the plaintiff's reputation in order to ensure that he was either not selected to contest in the Salor constituency by PAS in the 2008 General Elections or if he was so selected, to ensure that he would lose in the 2008 General Elections, by poisoning the minds of the electorate against him.

[73] Hence, the court included in the compensatory damages an amount for exemplary damages but it was considerably less than the sum of RM1,000,000 which was claimed by the plaintiff.

[74] The court took into consideration the decision of the Court of Appeal in *Datuk Seri Mohammad Nizar Jamaluddin lwn. Utusan Melayu (M) Bhd* [2014] 2 CLJ 605, in which the Court of Appeal had affirmed the decision of the High Court, which had awarded a sum of RM250,000 in damages to the plaintiff.

[75] In my considered view, in the instant case, the libels which are contained in the articles are far more serious than the one in that case. Therefore, the court ought to award a sum higher than the sum of RM250,000 which was awarded in that case.

[76] Hence, the court awarded a sum of RM350,000 which is a higher amount of damages than the amount which was awarded in *Datuk Seri Mohammad Nizar Jamaluddin lwn. Utusan Melayu (M) Bhd, supra*.

Witnesses' Testimonies

[77] The court agreed with and accepted the submissions of the learned counsel for the third defendant that the plaintiff's three witnesses in the assessment of damages are not disinterested witnesses. Hence, it is more likely that their evidence will be favourable to the plaintiff in the instant case.

A [78] This is because PW1, being the plaintiff himself, is a person who has a clear and personal interest in the outcome of this litigation. He is fifty-two years old. He is the Vice-President of PAS which formed the State Government of Kelantan.

B [79] PW1 stated, *inter alia*, as follows in his examination-in-chief:

3. S: Boleh YB beritahu mahkamah apakah asas perjuangan parti PAS ini?

C J: Bab Ketiga Fasal 5 Perlembagaan PAS menetapkan bahawa PAS memperjuangkan wujudnya di dalam Negara ini sebuah masyarakat dan pemerintahan yang terlaksana di dalamnya nilai-nilai hidup Islam dan hukum-hukumnya menuju ke arah keredhaan Allah. Fasal yang sama juga menetapkan bahawa tujuan PAS ialah mempertahankan kesucian Islam serta kemerdekaan dan kedaulatan Negara.

D 4. S: Adakah parti PAS mempunyai peraturan dari segi akhlak dan keperibadian ahlinya?

E J: Fasal 75 Perlembagaan Parti jelas menyatakan bahawa ahli-ahli PAS hendaklah taat dan patuh kepada hukum-hukum dan ajaran-ajaran Islam yang menjadi dasar PAS itu, mengamalkan akhlak dan peribadi Islam dan mengawal diri supaya tidak melakukan sebarang tindakan atau perbuatan yang menyalahi atau merugikan kepentingan Parti PAS.

5. S: **Mengikut Perlembagaan Pas, apakah pendirian parti berkaitan jika mana-mana ahlinya disyaki/terlibat dalam perbuatan rasuah?**

F J: **Prinsip dan dasar perjuangan Islam yang menjadi teras perjuangan PAS adalah sama sekali menolak perbuatan rasuah.**

6. S: Berdasarkan pembacaan YB akan laporan dibuat oleh Defendan Ketiga tersebut, **apakah kandungan laporan tersebut?**

G J: *Laporan tersebut secara langsung memfitnah saya kononnya saya telah melakukan salah laku dan penyelewengan kuasa. Laporan akhbar tersebut jelas berat sebelah, tidak benar dan sekaligus telah memalukan Plaintiff. Ia memberikan gambaran kononnya Plaintiff adalah ahli politik yang melakukan perbuatan keji iaitu salah laku dan penyelewengan ke atas amanah yang diberikan kepadanya melalui jawatan yang disandang oleh Plaintiff. Saya juga, sebagai ahli politik dari parti politik yang memperjuangkan prinsip-prinsip Islam berlandaskan Al-Quran dan As-sunnah, menanggung malu akibat daripada laporan akhbar tersebut. Saya juga ingin menyatakan di sini bahawa, Defendan Ketiga sengaja menerbitkan laporan akhbar tersebut tanpa menghiraukan penjelasan Plaintiff dan/ atau fakta-fakta sebenar. Laporan akhbar tersebut adalah bertujuan semata-mata untuk mensensasikan suatu aduan yang tidak berasas,*

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tanpa menghiraukan reputasi Plaintiff, lebih-lebih lagi Defendan Ketiga mengetahui bahawa Plaintiff adalah ahli politik dari parti PAS. Saya menyatakan di sini ini merupakan satu serangan pihak Defendan Ketiga untuk menjatuhkan kredibiliti saya di mata rakyat Kelantan khususnya dan rakyat Malaysia umumnya kerana saya percaya secara umumnya rakyat Malaysia dan Kelantan khususnya mengetahui saya adalah pemimpin politik dari Parti PAS dan merupakan ahli exco kerajaan negeri Kelantan pada tahun 2007.

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7. S: Pada pengamatan YB, adakah impak ('impact') atau implikasi laporan-laporan fitnah yang diterbitkan oleh Defendan Ketiga terhadap Plaintiff?

J: Ya, sangat serius.

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8. S: **Mengapa YB menyatakan ia memberi kesan atau implikasi yang sangat serius terhadap YB?**

J: **Ianya sangat serius kerana:-**

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- (a) *Pertama, akhbar Defendan Ketiga iaitu Berita Harian dan The New Straits Times adalah akhbar yang diterbitkan, disebarkan, dijual dan dibaca secara meluas bukan sahaja di negeri Kelantan malahan ke seluruh Semenanjung Malaysia. Saya difahamkan bahawa laporan kedua-dua akhbar ini iaitu Berita Harian dan The New Straits Times ini juga boleh diperolehi masyarakat dan orang ramai menerusi laman web Defendan Ketiga;*

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- (b) *Keduanya, Plaintiff adalah ahli politik PAS yang lantang dalam memperjuangkan isu-isu, antara lainnya, menentang perbuatan jenayah rasuah, salah laku dan penyelewengan kuasa. Saya percaya penerbitan laporan akhbar oleh Defendan Ketiga ini pada masa menjelang Pilihanraya Umum yang diadakan telah memalukan dan merendahkan reputasi Plaintiff dan kepimpinan PAS keseluruhannya. Dengan memberikan gambaran buruk terhadap Plaintiff yang merupakan Exco kanan negeri Kelantan dan menjawab jawatan tertinggi dalam parti PAS tentunya akan mensensasikan berita seterusnya memberikan keuntungan kepada Defendan Ketiga;*

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- (c) *Ketiga, sebagai ahli politik dan pemimpin parti yang memperjuangkan Islam, Plaintiff juga digambarkan sebagai seorang yang berpura-pura dalam perjuangannya, dan juga digambarkan sebagai seorang yang hipokrit, penipu dan menggunakan kekayaan untuk kepentingan peribadi;*

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- (d) *Keempat, Plaintiff yang pada masa yang material merupakan Pengerusi Jawatankuasa Pentadbiran Awam, Perancangan Ekonomi, Kewangan dan Pembangunan Masyarakat Negeri Kelantan telah digambarkan sebagai seorang yang menyalahgunakan kuasa, korup dan melindungi kroni serta tidak amanah dengan jawatan yang diamanahkan kepadanya; dan,*

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- A (e) Keempat, penerbitan laporan fitnah ini telah dengan teruk menjejaskan reputasi saya sebagai ahli politik dan pemimpin yang memperjuangkan Islam.
- B (f) *Kelima, tujuan Defendan Ketiga ini dapat dilihat dengan jelas apabila saksi pertama ('SD1') Defendan Ketiga yang telah memberikan keterangan bersumpah di dalam perbicaraan penuh di Mahkamah yang Mulia ini sebelum ini mengesahkan bahawa Plaintiff adalah 'target' dalam terbitan laporan fitnah tersebut.*
- ...
13. S: Bagaimana pula dengan Defendan Ketiga?
- C J: Defendan Ketiga, tanpa pengetahuan dan tanpa persetujuan saya, telah dengan sendiri menerbitkan permohonan maafnya seperti ditandakan sebagai ekshibit P6.
- (Emphasis added).
- D (See the witness statement of PW1 (P1) for the above questions and answers).
14. S: *Daripada Dato', apakah kesan ataupun permohonan maaf dari pihak The New Straits Times, Defendan ke-3 ini, untuk apa kesan permohonan maaf, adakah ada memberi apa-apa kesan kepada pernyataan-penyataan laporan fitnah yang telah dibuat terhadap Dato'?*
- E J: *Yang Arif, saya sendiri selaku Plaintiff tidak sedar adanya iklan penarikan balik tersebut dan saya melalui peguam saya atau saya sendiri tidak pernah dimaklumkan oleh Defendan. Kalau saya sebagai orang yang berkepentingan dalam isu ini secara langsung, tidak sedar tentang permohonan maaf tersebut, saya yakin general public juga tidak sedar terhadap permohonan maaf tersebut. Dan dengan itu, tidak dapat menghapuskan kerosakan reputasi yang telah dilakukan oleh penerbitan berita tersebut.*
- F (Emphasis added).
- G (See pp. 6 & 7 of the notes of evidence for the above question and answer).
15. S: Mengapa YB berkata sedemikian?
- H J: Pada saya, notis maafnya adalah begitu kecil, terpencil dan tersorok sehingga saya sendiri dan ramai pembaca tidak menyedarinya. Malahan, ianya hanya dibuat selepas kedua-dua Defendan Pertama dan Kedua menyiarkan permohonan maaf mereka padahal sebelum ini Defendan Ketiga begitu angkuh sekali dan enggan membuat apa-apa permohonan maaf kepada Plaintiff.
- I *Selanjutnya permohonan maaf Defendan Ketiga ini hanya disiarkan dalam akhbar The New Straits Times yang berbahasa Inggeris, sebaliknya tiada permohonan maaf disiarkan dan diterbitkan dalam akhbar Berita Harian mereka. Saya percaya pembaca akhbar Berita Harian yang juga diterbitkan (dan dijual) dalam versi Bahasa Malaysia adalah*

jauh lebih ramai dan meluas khususnya di dalam negeri Kelantan dan amnya di seluruh Semenanjung Malaysia. Oleh itu jumlah pembaca yang mengetahui tentang permohonan maaf ini adalah sangat terhad. Selanjutnya lagi, kepada pembaca-pembaca yang tidak boleh membaca akhbar Bahasa Inggeris, mereka tidak akan mengetahui tentang permohonan maaf oleh Defendan Ketiga ini.

A

Selanjutnya lagi, permohonan maaf ini tidak diterbitkan di halaman utama akhbar tersebut sebaliknya di bahagian yang terencil di dalam akhbar berkenaan.

B

Defendan Ketiga juga telah menyusahkan hidup saya sekian lama tanpa tanda-tanda sesal dan bertanggungjawab terhadap kesusahan reputasi pihak lain dengan kadar masa yang munasabah dan cara yang menyenangkan hati pihak yang telah dicemari nama baiknya. **Bahkan, cara Defendan Ketiga menyiarkan permohonan maaf sebelah pihak secara tersorok menunjukkan lagi niat Defendan Ketiga yang tidak ikhlas dan tidak boleh membersihkan nama baik saya.**

C

D

16. S: Adakah YB berhak untuk menerima apa-apa ganti rugi dari laporan fitnah ini?

J: Ya.

17. S: Mengapa YB berhak mendapat ganti rugi tersebut?

E

J: Seperti yang saya telah nyatakan di awal tadi, kerana kesan daripada kedua-dua laporan Defendan Ketiga tersebut adalah sangat serius dan menjejaskan reputasi dan maruah saya, dan dengan sengaja berniat untuk memalukan saya dan serta mereka gagal menunjukkan yang mereka benar-benar ikhlas dengan permohonan maaf yang hanya dibuat selepas setahun peguam saya memfailkan tuntutan terhadap Defendan Ketiga.

F

(Emphasis added).

(See the witness statement (P1) of PW1 for the above Questions and Answers).

G

18. S: Boleh Dato' beritahu kepada mahkamah, akibat daripada penerbitan laporan-laporan fitnah oleh pihak Defendan ke-3. Apakah kesannya kepada Dato' secara peribadi dan juga sebagai ahli politik?

J: **Yang Arif, berita ini telah disiarkan pada waktu desas-desus pilihan raya umum sudah begitu hampir.** Dan pada hari pertama penyiaran tersebut, ia menimbulkan kehebohan dan di kalangan orang ramai dan kekecohan kepada orang-orang yang dekat dengan saya kerana mereka beranggapan berita tersebut adalah benar. Saya terpaksa memberikan penjelasan kepada pihak-pihak yang menghubungi saya. *Dan kalau tidak kerana tindakan segera melalui peguam, memfailkan saman, saya yakin orang ramai sangat terpengaruh dengan berita tersebut. Selepas saman saya dilakukan, dalam ceramah-ceramah kempen pilihanraya pada Mac 2008, saya telah*

H

I

- A menggunakan pernyataan saman saya ataupun tindakan saya
menyaman NST dan 2 orang wakil rakyat tersebut untuk
mempertahankan diri saya. Jadi pertahanan diri saya daripada reputasi
teruk menjadi rosak adalah kerana tindakan saman saya ya. Kalau
saya tidak menyaman, memang ia boleh memberikan kesan yang
sangat buruk. Dan pada waktu itu, adalah dalam proses
pemilihan calon-calon pilihanraya. Jadi, tanpa tindakan saman
tersebut, saya pada waktu itu mungkin telah digugurkan sebagai
calon ya. Tetapi oleh kerana saya telah menyaman NST dan 2
wakil rakyat Barisan Nasional, sekurang-kurangnya, parti melihat
bahawa saya berani mempertahankan diri saya. Tetapi bagi pihak
Defendan, mereka telah melakukan sesuatu yang akibat
buruknya ditanggung oleh saya. Dan untuk menyaman, ia telah
memberikan kos. Dan bagi diri saya Yang Arif, saya telah
mempertahankan reputasi ini sejak daripada zaman saya aktif
dengan gerakan mahasiswa pada tahun 80-an kerana pada waktu
itu, isu-isu nasional telah saya kupas sebagai wakil pelajar melalui
majalah universiti, melalui keratan akhbar, tiba-tiba saya pula
dituduh melakukan perbuatan-perbuatan keji yang saya telah
kutuk sebelum daripada ini dan ia memberikan rasa malu yang
sangat mendalam. Sampai pada hari ini ya Yang Arif, saya masih
rasa kesan tersebut. ya. Kesan tersebut tidak berjaya dihakiskan oleh
kemenangan saya dalam kes ini yang telah diberikan oleh Yang Arif
kerana ia telah betul-betul meletakkan saya kepada pandangan setengah
orang. Kita tidak boleh lihat kesan ini Yang Arif kerana dalam konteks
DUN yang saya tandingi. Ini adalah national report dan kesannya
adalah kesan nasional. Kita tidak dapat mengukur apa yang ada dalam
otak orang yang telah membaca berita tersebut. Dan sehingga hari ini
tidak ada satu coverage yang besar yang diberikan oleh Straits Times
terhadap laporan kemenangan saya sama besar dengan laporan yang
telah menjejaskan saya. Tidak ada surat khabar surat khabar
mainstream yang memberikan laporan tersebut ya. Jadi kemenangan saya
dalam kes ini tidak menghilangkan sepenuhnya kesan buruk dalam
minda public terhadap imej saya dan kerana itu saya rasa mahkamah
perlu memberikan pengajaran kepada pihak Defendan dan kalau saya
boleh tambah Yang Arif, dalam seminggu lepas, akhbar-akhbar
Defendan telah menyiarkan muka dengan seakan-akan saya
telah dipanggil oleh Parti untuk memberikan keterangan selepas
saya berucap dalam Dewan Undangan Negeri baru-baru ini
dengan tajuk muka depan, "Husam Dipanggil" padahal
keadaannya adalah sebaliknya iaitu dimana saya telah berucap
dan saya diminta untuk berdepan mempertahankan kenyataan
saya, bukan saya dipanggil untuk disoal siasat, kononnya saya
bersalah. Bermakna Defendan tidak pernah serik daripada
memburukkan saya sejak dulu sampai ke hari ini. Dan oleh itu,
saya kira saya memerlukan perlindungan Mahkamah untuk
membolehkan saya pada masa-masa akan datang tidak lagi
diganggu oleh Defendan dengan berita-berita yang berat sebelah.

(Emphasis added).

(See pp. 7 & 8 of the notes of evidence for the above question and answer).

[80] In his cross-examination, PW1 testified, *inter alia*, as follows:

A

RWS: Soalan yang seterusnya YB saya adalah bahawa saya ingin menyatakan apa yang adalah pendirian anak guam saya iaitu anak guam saya tidak mendapat sebarang keuntungan ataupun manfaat daripada penerbitan artikel-artikel yang diadukan dalam prosiding ini. YB boleh setuju atau tidak setuju atau ...

B

Husam: Tidak setuju.

(See pp. 14 & 15 of the notes of evidence).

[81] In his re-examination, PW1 testified, *inter alia*, as follows:

C

MYS: ... YB telah ditanyakan di mana YB telah bersetuju bahawa iaitu YB Adhan dan Norzula, Dato' Norzula dan YB Mohd Adhan telah memohon maaf dan tanpa ganti rugi dan bahawa YB juga tidak bersetuju dengan cadangan peguam bahawa pihak New Straits Times tidak mendapat sebarang keuntungan atau manfaat daripada artikel yang dilaporkan. Boleh beri penjelasan kenapa YB tak setuju dengan cadangan bahawa Defendan Ketiga tidak memperolehi sebarang keuntungan atau manfaat daripada artikel yang dilaporkan?

D

HUSAM Yang Arif, saya merujuk kepada Bundle P5, muka surat 3 yang dirujuk oleh peguam Defendan sekejap tadi.

E

YA Bundle?

HUSAM Ikatan Dokumen Bersama P5, page 3, yang dirujuk pada saya oleh peguam Defendan sekejap tadi, dengan tajuk "Adhan Pula Mohon Maaf", Yang Arif. Pada para 3 Yang Arif.

F

...

HUSAM Saya bacakan ya. "Pada sidang akhbar tersebut, Mohd Adhan membacakan permohonan maaf yang berbunyi", seterusnya untuk latar belakang ya *Yang Arif kedua-dua Yang Berhormat ini tidak membuat pengakuan maaf secara unilateral. Mereka berbincang dengan peguam saya dan kemudian datang berjumpa dengan saya dan saya telah memberikan syarat kita kena adakah press conference bersama so all the press can cover.* So, oleh kerana mereka bersungguh-sungguh memohon maaf dan itu adalah satu komplimen politik kerana ini adalah lawan politik saya. So political battle should settle by political way. Dan Yang Arif pada muka surat 2 Bundle ini, page P4 ya yang dirujuk tadi, Classified tadi, saya telah membincang dengan peguam saya, Tuan Shabrimi bahawa saya bacakan Yang Arif, "*Saya Yang Berhormat Dato' Nozula Mat Diah dengan ini dan dengan sepenuh hati memohon maaf tanpa sebarang syarat kepada Yang Berhormat Dato' Husam Musa kerana telah membuat laporan tidak benar dan tidak berasas terhadap beliau kepada BPR pada tahun 2007*". Dalam pemahaman saya dan selepas berbincang dengan peguam juga, dalam pemahaman peguam, clause ini atau perkataan ini

G

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A tantamount kepada criminal. Saya boleh pergi ke Mahkamah untuk
ataupun pada polis untuk membuat laporan criminal kerana membuat
laporan yang salah atau tidak berasas. Jadi ini adalah satu
kemenangan kepada saya. Jadi saya boleh gunakan laporan ini bila-
bila masa atas saya punya pilihan ya. Jadi, kemudian datang,
B seminggu kemudian *The New Straits Times* unilaterally without consult
my counsel dan tidak juga consult saya telah membuat permohonan
selepas kesemua ADUN ini menarik balik, padahal kami telah
berusaha supaya kes ini tidak dipanjangkan dan kalau penarikan
C balik ini dibuat sebaik saja saman difailkan ia lebih memberikan benefit
kepada saya sama ada Defendan mendapat manfaat ataupun
tidak. Ia terpulang bagaimana kita membaca cerita hal-hal ini
kerana Defendan adalah satu mainstream media yang dipunyai oleh
Parti lawan saya, my opponents, so they belong to UMNO, so
indirectly, of course they will get benefit daripada dia punya shareholder.
D They already done the job to assassinate people, so indirectly or
commercially or so, because they publish this theory which tantamount
to sensation and atau apa nama ni sensasi so of course their sale maybe
goes up or they can satisfy their boss. So that is their, their, their rights
to determine. Pada pendapat saya memang ada manfaat kepada
Defendan. Tidak langsung dia tidak ada manfaat ya.

MYS Soalan terakhir saya untuk Dato' ya. Kenapa dengan pihak YB
Dato' Norzula dan juga YB Dato' Adhan, iaitu Defendan
E Pertama dan Kedua dalam kes ini tidak ada apa-apa ganti rugi
kewangan diterima sebagai penyelesaian.

HUSAM Pada pendapat, Yang Arif, dalam perasaan saya apabila rakan
saya, colleagues saya dalam dewan ya, bila mereka membuat tuduhan
dan mereka terpaksa menarik balik, itu adalah satu punishment yang
F besar to them, kepada politicians. Tetapi dalam kes *Straits Times*,
nothing punishment done to them. Bagi seorang politician, their
reputation is everything. Kalau they need to retract back their accusation
means that their reputation is down. So that is a punishment already,
but they willingly come to see me and negotiate with me and consult me
and do a press conference together and do sincerely without unilateral
G action. So nampak kesan keikhlasan tu dalam tindakan mereka.
Dalam kes *Straits Times*, saya, I cannot feel anything. Saya tak
rasa dia sincere, they never contact me, they never consult me,
they never said anything to me secara (inaudible). They go
unilaterally, so bagi saya unilateral action is more, is something
to me. Macam saya nothing. I just ordinary animals, you can
H kick me, and then you unilaterally put apology without inform
me. So I think this means we need to punish their attitude, if
not everybody can go easily and slander everybody, so they
escape at the end of the day.

(Emphasis added).

I (See pp. 15 to 18 of the notes of evidence).

[82] PW2, the plaintiff's second witness, who is fifty-three years old, is a businessman. He has known the plaintiff since 2007. PW2 admitted in the assessment of damages that he is a member of PAS (p. 27 of the notes of evidence) of which the plaintiff is the Vice-President.

A

[83] PW2 also knew that at the material time the plaintiff was the Chairman of the Committee for Public Administration, Economic Planning, Finance and Social Development in the Kelantan State Government and the former MP for Kubang Kerian, Kelantan.

B

[84] PW2 also admitted that he was involved in campaigning for PAS in the 2008 General Elections (p. 27 of the notes of evidence). PW3 was shocked when he read the first article on 28 November 2007 because it had reported that the plaintiff had abused his power and that the plaintiff is a corrupted politician from PAS.

C

[85] PW2 stated, *inter alia*, as follows in his examination-in-chief in the assessment of damages:

D

14. S: Pada pandangan awak, mengapa Plaintiff ini menjadi sasaran pihak akhbar khususnya dari Berita Harian?

J: Saya percaya ianya disebabkan Plaintiff merupakan salah seorang tokoh pemimpin politik muda dari PAS yang berpotensi menjadi teladan dan membawa pengaruh sokongan yang besar dari golongan muda khususnya. Oleh itu, akhbar Berita Harian yang memang diketahui penyokong kuat kepada pihak Barisan Nasional tentunya berperanan untuk menjatuhkan maruah Plaintiff di mata rakyat di negeri Kelantan khususnya.

E

(See the witness statement (P2) of PW2).

F

[86] In his cross-examination PW2 testified, *inter alia*, as follows:

RWS: Encik, bolehkah saya merujuk Encik kepada Exhibit P2, iaitu pernyataan saksi Encik? Soalan 14, muka surat terakhir. Tidak ada muka surat nombor. Muka surat terakhir Encik, nombor 14, soalan nombor 14. Dan soalan yang ditanyakan, pada pandangan awak, mengapa Plaintiff ini menjadi sasaran pihak akhbar, khususnya dari Berita Harian, dan jawapan, saya percaya, saya takkan membaca keseluruhan jawapan Encik, tetapi soalan saya adalah jawapan ini adalah merupakan pendapat Encik betul?

G

SYUKRI: Ya, pendapat saya.

H

RWS: Pendapat Encik ya. My Lady I have no further question.

(See pp. 27 & 28 of the notes of evidence).

[87] PW3, the plaintiff's third witness, who is thirty-five years old, at the time he testified in court in the assessment of damages is working for the Menteri Besar of the State of Kelantan as the Manager of a plantation and

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A the plaintiff is the Vice-President of PAS which formed the State Government of Kelantan. PW3 also knows that the plaintiff was the Chairman of the Committee for Public Administration, Economic Planning, Finance and Social Development in the Kelantan State Government and the former Member of Parliament ("MP") for Kubang Kerian, Kelantan.

B [88] In 2007, PW3 was working in the Janglau Centre for the Development of Commodities, Pahang as an agricultural officer. PW3 had read both the articles. Based on the contents of the articles, the articles had libeled the plaintiff because they painted the plaintiff as a person who had abused his power and who is corrupted. His impression was that the third defendant had
C deliberately libeled the plaintiff in order to injure the plaintiff's dignity. He also found that the plaintiff had become the topic of conversations among the members of the public, for example, in coffee shops and public places. He explained that due to the nature of his job he had the opportunity to meet
D of them had asked him in his meetings with them, why the PAS leadership in Kelantan which fights for the Islam religion is reported to have corrupted leaders who embezzle Government funds.

[89] Hence, he found that the articles had prejudiced the dignity of the leaders in Kelantan especially the plaintiff.

E [90] PW3 also said that when he returned to Kelantan to cast his vote in the 2008 General Elections he found that the Barisan Nasional had used the articles in its campaign against PAS, in general, and against the plaintiff, in particular. Barisan Nasional had used the articles to attack the integrity of the Kelantan State leadership to give the impression to the voters that PAS and
F the plaintiff were involved in corrupt practices when all along it was PAS and the plaintiff who had attacked the Barisan Nasional for their involvement in corrupt practices.

[91] In his examination-in-chief, PW3 stated, *inter alia*, as follows:

- G 4. S: Boleh Tuan beritahu Mahkamah intipati kandungan laporan dalam kedua-dua laporan akhbar di muka surat 1(B) dan muka surat 1(B) Ikatan Dokumen Bersama (Tambahan) tersebut?
- J: Berdasarkan kandungan kedua-dua laporan akhbar tersebut, Defendan Ketiga telah menerbitkan laporan fitnah terhadap
H Dato' Husam yang menggambarkan beliau sebagai seorang yang menyalahgunakan kuasa dan korup. Selanjutnya, dakwaan yang diterbitkan oleh Defendan Ketiga terhadap beliau juga adalah suatu fitnah yang dibuat semata-mata untuk mengaibkan dan menjatuhkan maruah beliau.
- I 5. S: Apakah kesan langsung yang Tuan lihat hasil dari laporan akhbar tersebut?

J: Saya dapati hal tersebut telah menjadi bahan bualan orang ramai di merata tempat seperti di kedai-kedai kopi dan tempat awam. Saya bekerja di Pahang dan banyak bertemu dengan orang ramai di kampung-kampung. Akibat dari laporan akhbat tersebut, saya dapati ramai orang bertanya kenapa ada pemimpin PAS di Kelantan yang memperjuangkan Islam tetapi dikhabarkan mempunyai pemimpin korup dan menggelapkan wang. Ia telah menjejaskan maruah pemimpin Kelantan terutamanya plaintiff.

A

B

7. S: Adakah ini digunakan oleh pihak Barisan Nasional dalam kempen Pilihanraya Umum 2008?

J: Ya. Sebagai pengundi luar yang balik mengundi di Kelantan, saya dapati ramai yang merasakan serangan ke atas integrity pemimpin negeri Kelantan memberikan kesan seolah-oleh plaintiff dan Pas sendiri mengamalkan rasuah sedangkan selama ini mereka menyerang Barisan Nasional sebagai mengamalkan politik rasuah.

C

(See the witness statement (P3) of PW3).

D

[92] In his cross-examination, PW3 testified, *inter alia*, as follows:

RWS: Soalan ke-2, jawapan Encik di muka surat 2 di atas. Barisan yang terakhir ya, ayat terakhir ya, Encik menyatakan, "Saya berpandangan beliau adalah seorang yang sangat dihormati dan berwawasan jauh". Boleh Encik tolong sahkan bahawa ini adalah pandangan peribadi Encik?

E

MOHD: Ya ini adalah pandangan peribadi saya.

...

RWS: Tak berubah. Encik, soalan keempat di muka surat 2. Jawapan Encik telah berbunyi, selanjutnya, di ayat yang terakhir ya, "selanjutnya dakwaan yang diterbitkan oleh Defendan ke-3 terhadap beliau juga adalah suatu fitnah yang dibuat semata-mata untuk mengaibkan dan menjatuhkan maruah-maruah beliau". Encik, soalan saya adalah, daripada mana, apakah fakta-fakta ...

F

G

MOHD: Fakta ...

RWS: Sorry, soalan saya belum lagi ... I rephrase. Soalan saya adalah, Encik tidak mempunyai apa-apa pengetahuan mengenai apakah niat anakguam saya, iaitu Defendan ke-3 dalam membuat penerbitan tersebut. Encik boleh bersetuju atau tidak bersetuju kepada soalan tersebut ataupun katakan Encik tidak tahu. Apakah, Encik tidak mempunyai pengetahuan mengenai niat anakguam saya, Defendan ketiga dalam menerbitkan ...

H

MOHD: Saya tahu. Dia berniat untuk memberi satu fitnah kepada Plaintiff.

I

(See pp. 32 & 33 of the notes of evidence).

- A [93] In so far as the contents of the plaintiff's three witnesses' testimonies are concerned, the court found that their testimonies are based on facts and their own beliefs, opinions and perceptions of the matter. In evaluating the testimonies of the plaintiff's witnesses, the court found the three witnesses for the plaintiff to be honest and credible witnesses although they were not
B disinterested witnesses. The court found their evidence credible, consistent and reliable.

- [94] It is clear from the testimonies of the plaintiff's witnesses as reproduced above that the plaintiff is highly respected and regarded for his far sightedness and vision by PW2, PW3 and the younger electorate in
C Malaysia, in general, and in Kelantan, in particular. Both of them felt and believed that the article was deliberately published by the third defendant in the defendant's two newspapers to injure the plaintiff's reputation by lowering his estimation in the minds of right thinking members of the society and to discourage the electorate from supporting him and voting for him in
D the 2008 General Elections.

- [95] The third defendant was at liberty to call its own witnesses to rebut and refute the testimonies of the plaintiff's witnesses. The third defendant could have exercised this option which was available to them to call witnesses whom they perceive and regard as neutral and independent
E witnesses to testify before the court. However, they chose not to do so. Hence, the court was able to conclude based on the evidence adduced by the plaintiff in the main trial and also in the assessment of damages and the facts and circumstances of the instant case that the damage that the plaintiff suffered was serious due to the publication of the articles by the third
F defendant in its two newspapers.

Documents Adduced In The Trial

- [96] P.U. (B) 7. of the year 2000 in p. 4 of Bundle B shows that the vote margin for the 1999 General Elections in the plaintiff's favour was 16,091.

- G [97] In 2004, the margin was reduced to 2,882 (p. 8 of Bundle A) and in 2008, it became 3,232 (p. 13 of Bundle A). The vote margin for the 2013 General Elections in the plaintiff's favour was 3,683 (p. 17 of Bundle A).

- [98] The above statistics were further admitted to by the plaintiff in his cross-examination as follows:

- H RWS: Terima kasih Yang Arif. YB, boleh saya merujuk YB kepada Ikatan Dokumen Bersama A yang ditanda. Di muka surat 1, YB boleh tolong sahkan bahawa pada tahun 2004, di pilihanraya umum bahagian Kijang, DUN Kelantan, YB telah mendapat majoriti dan telah menang dengan majoriti 2882?
I HUSAM: Ya Yang Arif.

RWS: Dan di muka surat 2, YB di keputusan pilihanraya umum 2008, bolehkah YB untuk kawasan Salor, bolehkah YB mengesahkan bahawa kemenangan YB adalah dengan majoriti 3232? A

HUSAM: Ya Yang Arif.

RWS: Dan di muka surat 3, YB di keputusan pilihanraya umum Kelantan 2013, kawasan Parlimen Salor, majoriti kemenangan ... B

MYS: DUN ... DUN Salor.

RWS: DUN Salor. Dun Salor, sorry, adakah majoriti kemenangan YB adalah 3683? C

HUSAM: Ya.

(See p. 10 of the notes of evidence).

[99] The third defendant has submitted that based on the documents adduced in the trial and from the plaintiff's testimony in the trial the plaintiff's vote margins in fact started to reduce even before the articles were published. Nevertheless, the court rejected the third defendant's submissions that the publications of the articles by the third defendant in 2007 clearly do not evidence loss of support for the plaintiff in the 2008 General Elections. This is because the court took into consideration the plaintiff's evidence that had he not resorted to promptly suing the first, second and third defendants, he would most probably not have been allowed to contest in the 2008 General Elections let alone win the seat which he had contested with a majority of 3,232 votes. An irresistible inference could be drawn by the court that in publishing the libels against the plaintiff it was the intention of the third defendant to oppress the plaintiff who had joined PAS as a member since 1982 and to ensure that the plaintiff would either not be allowed to contest in the 2008 General Elections or that if the plaintiff was allowed to contest in the 2008 General Elections, the plaintiff would either lose or win with a significantly reduced majority, bearing in mind that in the 2004 General Elections the plaintiff won with a significantly reduced majority of 2,882 votes. The Court also drew a reasonable inference that had the third defendant not libeled the plaintiff in that manner, the plaintiff would have been able to win the seat which he had contested in the 2008 General Elections with a substantially higher vote margin than the majority of 3,232 votes which he had actually obtained bearing in mind that in the 1999 General Elections he was able to win with a very big majority ie, a majority of 16,091 votes. D
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Conclusion

[100] It is plain from the plaintiff's SOC that the plaintiff seeks a sum of RM2,000,000 as general damages for the publication of the articles in question, a sum of RM1,000,000 as aggravated damages and a sum of RM1,000,000 as exemplary damages. The plaintiff, however, did not adduce I

- A any evidence in the trial to show that he is entitled to be awarded the total sum of RM4,000,000 as general, exemplary and aggravated damages which were prayed for specifically and expressly in the plaintiff's SOC. Furthermore, the decided cases relied upon by the third defendant are clear authorities, that the amount of damages which the court ought to award to
- B the plaintiff in the instant case should be within the comparable range of awards after having taken into consideration the current awards made by other courts for similar defamation suits ie, suits filed by politicians against the writers, printers and publishers of newspapers, in particular, the main stream media.
- C [101] Based on the reasons as stated above, the court was of the considered view that the amount of RM350,000 which was awarded to the plaintiff as general, aggravated and exemplary damages was fair, reasonable and appropriate.

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